

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

Forward-Looking Mechanisms for
High-Cost Support for Non-Rural ILECs

CC Docket No. 97-160

Access Charge Reform

CC Docket No. 96-262

**REPLY COMMENTS OF THE WEST VIRGINIA CONSUMER ADVOCATE
ON THE METHODOLOGY ORDER
FURTHER NOTICE OF PROPOSED RULEMAKING**

The Consumer Advocate Division of the Public Service Commission of West Virginia ("West Virginia Consumer Advocate") hereby submits these reply comments concerning the Methodology Order of the Federal Communications Commission ("Commission") in the consolidated Universal Service and Access Charge reform proceedings.¹ In its initial comments, the West Virginia Consumer Advocate supported the Commission's high-cost framework, with certain modifications designed to guarantee sufficient federal universal service support to maintain rate comparability on the one hand, while averting unwarranted expansion of the federal fund on the other. The West Virginia Consumer Advocate supports continuing to aggregate costs at the study area level so that any growth in the federal fund will parallel actual growth in local competition. The West Virginia Consumer Advocate also supports a national cost benchmark of 135% of national

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform*, CC Docket No. 96-262, *Seventh Report and Order and Thirteenth Order on Reconsideration* in CC Docket No. 96-45, *Fourth Report and Order* in CC Docket No. 96-262, and *Further Notice of Proposed Rulemaking*, FCC 99-119 (May 28, 1999).

average costs, and state per line responsibility of \$2.00 per month. If additional federal support is indicated in order to maintain rate comparability, this support should not be used to reduce federal interstate access charges. The particular use of additional federal funds necessary to maintain comparability should be left to the states.

1. A Wide Array of Parties With Divergent Interests Agree that the Study Area Should be Used for Determining Federal Universal Support

Various parties, including Bell Atlantic, Cincinnati Bell Telephone Company, and the state Commissions of Arkansas, Maine, Montana, New Hampshire, North Dakota, Vermont, West Virginia and Wyoming agree that the study area is the appropriate geographic area at which overall costs should be aggregated in order to calculate federal universal support levels for non-rural companies. Such agreement over a wide range of divergent telecommunication interests is rare, and clearly indicates this is a sound approach for ensuring adequate support without unwarranted expansion of the federal fund. In agreeing with the conclusion of the Federal-State Joint Board in its Second Recommended Decision, the broad consensus of various stakeholders on this point validates the logic of the Board's recommendation.²

Sprint Corporation ("Sprint") stands out as a voice of dissent on this issue in its initial comments on the Methodology Order. Sprint supports use of a wire center or even smaller geographic area for purposes of calculating costs under the universal service plan. Sprint argues that utilizing study areas for purposes of calculating costs somehow imposes insurmountable barriers to

² One additional point bears reiteration: the West Virginia Consumer Advocate fully supports establishment of costs for each wire center by utilizing the forward-looking cost model. However, these wire center costs should be aggregated at the study area level in order to calculate federal support. It is the totality of costs incurred by a company in serving customers within a state, including both high-cost and low-cost exchanges, that should serve as the basis for evaluating whether there should be a transfer of funds from other jurisdictions to maintain comparable rates.

entry for competitive local exchange carriers ("CLECs"). (Initial Comments of Sprint, pp. 10-11). Sprint also argues that from a costing standpoint, the study area approach uses an average cost for the entire study area, and therefore merely perpetuates the status quo. (Id.)

As to Sprint's first argument, the perceived barrier to entry is a theoretical uncertainty which fails to take into account one simple reality: nothing prevents CLECs from entering any study area, and vigorously competing for low-cost, high-margin business under the plan envisioned by the Commission and the West Virginia Consumer Advocate. CLECs should in no different position than incumbent local exchange companies ("ILECs") when it comes to universal service obligations under section 214(e) of the Telecommunications Act of 1996. ("the Act"). Those obligations require that all "eligible telecommunications carriers" as defined under the Act must offer the services that are supported by universal service throughout the service area, and advertise the availability of the service throughout the service area. That obligation is imposed by the Act itself. CLECs may decide to selectively target only low-cost, high-margin business within a service area. Nothing in the Act, or the Methodology Order, prevents that type of competitive strategy in the marketplace. However, if CLECs pursue this strategy, they simply will not be eligible for universal service reimbursement.

If a CLEC becomes an ETC by offering service to all customers within a service area, the CLEC should be treated the same as an ILEC in determining support. The essential point is that all of the carriers' costs necessary to efficiently serve a study area - including both low and high-cost exchanges - must be factored into the determination of whether the carrier receives USF support to maintain comparability of rates. This is accomplished by aggregating wire center cost data at the study area level for all companies. From that standpoint, ILECs and CLECs should be treated no differently from one another. Thus, contrary to Sprint's position, aggregation of cost data at study area level for purposes of determining universal service support ensures a level playing field among

all carriers.

As to Sprint's second argument - that averaging costs averaged over a study area maintains the status quo - suffice it to say that aggregation of costs at the study area level does not preclude determination of costs on a disaggregated basis, at the wire center level. Determination of wire center costs allows each competitor to know the presumed cost of serving every area within a state, and the impact on federal support which will result from serving customers in a particular wire center. Far from maintaining the status quo, determination of costs at the wire center level and aggregation of those costs at the study area level will promote competition, preserve rate comparability, and ensure that the federal fund only grows as local competition actually develops.

2. Sprint's Alternative Proposal to the Methodology Order is an *Ad Hoc* Approach Which Depends Upon Periodic Regulatory Intervention Without Objective Standards Or Logical Consistency.

One of the strengths of the proposal to aggregate costs at the study area level is that there is no "extra" money created in the federal fund which must be artificially reduced to reach a desired end result. The size of the fund will only rise to the extent that implicit subsidies are, in fact, eroded, and will be commensurate with the actual development of local competition. As an alternative to the Joint Board's study area proposal, Sprint offers a scheme based upon cost calculation only at the wire center level. Since Sprint's proposal only considers high-cost exchanges, and ignores the existence of low-cost exchanges, the plan ensures a bloated fund which must be artificially reduced to reach a level of funding which is deemed appropriate from a policy standpoint.

The weakness of the Sprint approach is self-evident: it requires regulators, rather than market forces, to periodically intervene and impose artificial reduction mechanisms on the fund. Furthermore, Sprint has offered no rational basis or objective standards for imposing such reductions.

In summary, Sprint's proposed plan is as follows:

1. Federal support should be available only for wire centers whose costs are 150% or greater than the nationwide average cost per line;
2. "Initially" only 37.5% of the costs exceeding that threshold should be eligible for federal support;
3. States will be responsible for funding their internal universal service needs up to an amount equivalent to \$1.00 per access line per month, and federal universal support will be available only to the extent that the support need defined in step 2 above exceeds the amount a state could raise through a \$1.00 monthly charge per access line.

The problem with Sprint's proposal is the subjective, and uncertain nature of the methodology calculation. As Sprint terms it, the fund will be "initially" reduced to 37.5% of the calculated fund amount based upon costing at the wire center level. While professing concern "with the expansion of federal universal service support," and advocating initial funding at "conservatively low levels," Sprint comes up with a plan that ensures an inflated fund. Sprint's proposal to impose a reduction mechanism is based upon a result-oriented litmus test that defies objective justification.

Rather than necessitating periodic regulatory intervention to cut out the "extra money" in an excessive fund based only on costs at the wire center level, the West Virginia Consumer Advocate urges the Commission to adopt a truly conservative, market-based approach. Aggregation of costs at the study area level reflects the total costs of a company to serve an entire area within a state. As competition develops, the number of low-cost lines served by incumbents should fall, driving up the overall average cost of serving the entire study area.³ These losses may or may not occur as competition evolves. However, the important point is that aggregation of costs at the study area level matches any growth in the universal fund size with actual erosion of implicit subsidies.

³Conversely, as a CLEC serves more high-cost lines, the aggregate average cost of serving the study area should rise.

Adopting a methodology which incorporates, in effect, an automatic growth mechanism which matches the actual growth in competition, is superior to a methodology which creates a huge federal universal service fund, and then arbitrarily cuts it down to a pre-determined size. Use of the study area ensures that even if a company suffers competitive losses among its low-cost lines, there will not be unwarranted growth of federal support if robust access line growth in low-cost areas offset those losses. That is precisely what is happening in the market, and the West Virginia Consumer Advocate supports a methodology which incorporates this competitive reality.

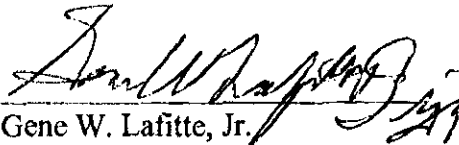
3. Use of Federal Universal Service Funds to Maintain Affordability and Comparability of Rates in High-Cost Areas Should Be Left to the States

At page 8 of its comments, USTA apparently proposes that increased funding from the Commission's new universal service methodology be used to reduce interstate access charges. To its credit, the USTA states at page 10 of its comments that its proposal is "distinct from the current high cost program," and that the USTA does not support transferring funds from the current high-cost fund to reduce access charges. Nevertheless, the West Virginia Consumer Advocate must reiterate that to the extent implementation of a new federal universal framework results in increases in federal funds for some non-rural companies in some states, the use of these additional funds should be left to each state.

The whole purpose of the Commission's proposed methodology is to determine the cost of serving high-cost areas, and calculating the amount of external federal support necessary to maintain comparability of rates across the nation. Simply stated, use of funds slated for support of high-cost areas to reduce interstate access charges is a non-sequitur. There is no rational nexus between reduction in access and support for high-cost areas within a state. On the other hand, the current federal high-cost fund represents an infusion of support from the interstate arena into the intrastate

jurisdiction specifically to aid high-cost areas.⁴ Any increase in support resulting from adoption of a new universal service methodology should be treated in a similar manner. As the Commission has noted, each state commission will be familiar with the rate structure in their own states, and the needs of high-cost areas in each state. Accordingly, states should be in the best position to determine how these additional funds should be used to preserve and enhance affordability and rate comparability in high-cost areas within that state.

Respectfully submitted,



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⁴Receipt of federal high-cost funds are accounted for as a reduction to intrastate expenses.